political excitement, demonstrates to our judgment that the question in controversy is so involved with political considerations as to render it eminently proper that it should be referred back to the political power of the nation, and the law-making power which created it be consulted in its modification or repeal.

Without suggesting what would be our judgment as to the modification of the rule, or whether any, let it be sufficient to say that it is a question for legislation, and not for adjudication.

The motions are denied.

The other judges concurred.[1]

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*Supreme Court of Pennsylvania.*

THORNTON CONROW *v.* GEORGE M. STROUD.

Where a party, at the trial of a cause, takes an exception to the ruling or to the charge of the court, and puts the same in writing before the jury deliberate, the judge is bound to seal the exceptions, without regard to their nature or materiality.

If he decline to seal them, a writ under the statute of Westminster 2d will be awarded by this court, commanding him to confess or deny the exceptions, and if his return confess them he will be compelled to seal them.

THE proceedings were commenced by the presentation of the following petition, duly sworn to:—

"The petition of Thornton Conrow respectfully showeth, that he is the plaintiff in error in a certain case, entitled Conrow *v.* Schloss, etc., and that he has sought by said writ to bring before your Honors certain errors committed by the Honorable George M. Stroud, an Associate Justice of the District Court for the City and County of Philadelphia, in a case between Hiram Schloss, Lazarus and Simon Schloss, trading as Schloss Brothers, as plaintiffs, and your petitioner as defendant, to September Term 1864, and No. 536, which was tried before him on the 12th day of November 1866, by a jury duly impannelled.

"That the said Honorable George M. Stroud did charge the jury in said case as is set forth in the exhibit marked A,[2] and that the counsel of your petitioner, before said jury deliberated on said

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[1] WYLIE, J., delivered a concurring opinion, for which we regret that we have not room. EDS. A. L. R.

[2] The charge is omitted as not material in the view taken by the court.

case, and in their presence, did except to said charge as is specifically set forth in Exhibit B, and the said Honorable George M. Stroud did note said exceptions as the counsel for your petitioner therein did then and there put and make the same.

"And your petitioner further showeth that, pursuant to the rules of the court of which the said Honorable George M. Stroud is a justice, the counsel for your petitioner, on the 23d day of November, and within ten days after the verdict was rendered in said case, did present a formal bill of exceptions to the said Honorable George M. Stroud, with the exceptions as made at the time of the trial and so reduced to writing as aforesaid, therein written, and did request the said Honorable George M. Stroud to affix his seal thereto, which the said Honorable George M. Stroud did then and there refuse to do.

"And your petitioner further showeth, that on the 29th day of December 1866, the counsel for your petitioner did again present said bill to the said Honorable George M. Stroud, and did again request him to affix his seal thereto, and he did then and there refuse so to do.

"And your petitioner further showeth, that the refusal of the said Honorable George M. Stroud to affix his seal to the said exceptions is to the grievous and manifest injury of your petitioner, and against the statute in such case made and provided.

"He therefore prays your Honors to award a writ conformably to the statute in such cases made and provided, directed to the said Honorable George M. Stroud, commanding him to appear at a certain day, either to confess or deny the matters herein set forth, and, if he confess the same, to affix his seal to said exceptions."

The exceptions were quite numerous, but the two following only are material, being those which were chiefly relied upon at the argument:—

"Defendant excepts: 1st. Because, in the recapitulation of the evidence, the learned judge gave undue weight and prominence to those portions thereof which bore against defendant; and omitted, or alluded slightingly to, those portions which bore in his favor.

2d. Because the charge, as a whole, was calculated to mislead the jury."

Upon this petition the court awarded a special writ under the Statute of Westminster 2d, returnable at the next motion day.[1]

Upon that day the respondent made the following return:

This respondent, by protestation, not owning or allowing any of the matters of the petition to be true, as they are therein alleged, but waiving, so far as it is in his power so to do, all and every objection to the jurisdiction of your Honors in respect to the prayer of the petition, shows and offers to the consideration of your Honors—

That the District Court for the City and County of Philadelphia is a court of special jurisdiction. * * *

That the statute of Westminster 2, chap. 31, is the only autho-

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[1] As this case is believed to be almost unique, we give the writ, which was adapted from the ancient writ found in the Registrum Brevium, and was as follows:—

CITY AND COUNTY OF PHILADELPHIA, TO WIT:

*The Commonwealth of Pennsylvania to Hon. George M. Stroud, Greeting:*

*Whereas*, by statute, among other things, it is provided, that in any suit before the justices, where an exception is taken, if the said justice before whom the same is taken refuse to allow the same, and the party making the exception puts the same in writing, and requires the justice to put his seal thereto, in testimony of the same, if he refuse so to put his seal, it shall be affixed as in said statute is set forth.

*And whereas*, one Thornton Conrow has filed his petition before the justices of the Supreme Court of Pennsylvania, complaining that, lately, in a certain suit in the District Court for the city and county of Philadelphia, to September Term, 1864, and number 536, before you, the said George M. Stroud, between Hiram Schloss, Lazarus Schloss, and Simon Schloss, trading as Schloss Brothers, and the said Thornton Conrow, various exceptions were taken and alleged to your charge; and those exceptions have been put in writing, for that you refuse to allow the same, and have been repeatedly required and prayed to affix your seal to those exceptions, according to the form of the aforesaid statute. Yet so it is, that you have objected and still do object and refuse to affix your seal to the aforesaid exceptions, to the grievous injury and manifest prejudice of the said Thornton Conrow; and the said Thornton Conrow did pray said justices to provide a remedy for him.

*And because* we are desirous that the aforesaid statute be strictly observed, and that justice be done to the said Thornton Conrow in the premises, we command you, *if so it be*, that on or before Saturday the 26th day of January 1867, you affix your seal to the aforesaid exceptions thus had before you in the aforesaid suit, by the aforesaid Thornton Conrow, in writing, according to the form of the statute aforesaid. *And hereof fail not*, under the penalty in such cases impending.

Witness the Honorable GEORGE W. WOODWARD, Chief Justice of said Court, this fifteenth day of January, A. D. 1867.

JAMES ROSS SNOWDEN, [SEAL.]
*Prothonotary.*

[U. S. Stamp. Fifty cents.]

rity whereby a bill of exceptions is matter of right to be required by any person impleaded before the judges of the said District Court, and that by the true intent and meaning of said statute, the pretended bill of exceptions mentioned in the petition ought not to have been allowed by the respondent, but, on the contrary, it was and is his duty to refuse to seal the same.

That the Statute of Westminster 2, before and at the time of the settlement of this country by colonists under the charter granted to William Penn, had received a judicial construction, that a bill of exceptions should be taken and allowed only upon some point of law, either in admitting or denying evidence, or a challenge, or some matter of law arising upon facts not denied or sufficiently proved, in which either party had been overruled by the court. This proposition was asserted in the argument of *Bridgeman* v. *Holt*, Show. Parl. Cas. 120, A. D. 1693, as familiar learning in that day, and also by Sir William Blackstone, 3 Com. 372, and in Buller's Nisi Prius 310.

The Supreme Court of the United States, in *Ex parte Crane*, 5 Peters 190, a case presenting no other matter for adjudication, denied the right of a party to a general exception to the charge of the judge presiding at the trial, and required a distinct specification of the point or points of law, in the ruling of which the judge was supposed to have erred. And, to impart to this judgment the highest efficacy, the same court shortly afterwards adopted the following rule of court: "That hereafter the judges of the Circuit and District Courts do not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law upon any general exception to the whole of such charge; but that the party excepting be required to state distinctly the several matters of law in such charge to which he excepts, and that such matters of law, and those only, be inserted in the bill of exceptions and allowed by the court."

Our sister states have given the highest sanction to the utility and necessity of this doctrine. In at least sixteen of these, express legislation exists, requiring in clear and positive terms that in bills of exceptions a specification shall be made of the points of law in the decision of which the inferior tribunals are alleged to have erred; thus at once embodying the substance of the British statute, and adopting the exposition which the courts of that kingdom had placed upon it. In the remaining states, it

is confidently believed that no decision can be adduced contravening in the slightest degree the received construction of the Statute of Westminster, or any intimation of a practice at variance with its requirements. In Connecticut the statute appears to be yet in force, and the same judicial construction has been given to it which it had received before the colonization of the State. *Wadsworth* v. *Sandford*, Kirby 456, A. D. 1788; *Watson* v. *Watson*, 10 Conn. 75; *Picket* v. *Allen*, Ibid. 146. In the Supreme Court and in the Court of Errors and Appeals of New York, the same doctrine is maintained, as may be seen in the opinions of Chancellor KENT in *Van Gorden* v. *Jackson*, 5 Johns. 467, and in *Frier* v. *Jackson*, 8 Johns. 387; and of Justice WOODWORTH in *Jackson* v. *Cadwell*, 1 Cowen 639; and of Chancellor WALWORTH in *Law* v. *Merrills*, 6 Wend. 274. To the same effect is the decision of the Supreme Court of New Jersey in *Coxe* v. *Field*, 1 Green 216, on the statute of that state, which, with a slight verbal addition, is a transcript of the Statute of Westminster. And, in short, wherever trial by jury and *courts of error* have a place in the same system of jurisprudence, and the forms of the common law are observed, and a bill of exceptions is the prescribed mode of bringing under revision the proceedings of the inferior tribunal, a specification of the alleged errors in such tribunal has been, it is believed, always deemed an essential requirement at the hands of the complaining party.

The respondent submits to the consideration of your honors that to the generality of this remark, the decisions of our own courts furnish no exception, although it is freely admitted that, in regard to bills of exceptions, as well as in many other matters, a very loose practice has, to a great extent, obtained; as, for example, in *Thomas* v. *Wright*, 9 S. & R. 90, where, it appears, the notes of the evidence of four counsel in the cause, together with the notes of the judge, were referred to in the bill of exceptions instead of an insertion of the appropriate evidence, or a statement of facts settled by the counsel or court. And our reports furnish traces of very extraordinary pretensions on the part of counsel in regard to the proceedings of inferior courts, in connection with the revising superintendence of this honorable court. Thus in one case, *Stewart* v. *Huntingdon Bank*, 11 S. & R. 267, it was made the subject of a bill of exceptions, that the judge refused to suspend the trial of the cause until the bill of excep-

tions was drawn up in form and sealed by one of the judges; and in *Munderback* v. *Lutz*, 14 S. & R. 125, the court was moved for a rule to show cause why a *mandamus* should not issue, commanding the judge who had presided on the trial below, to furnish his notes of the evidence, for the purpose of having them transcribed for the use of counsel in reference to the bill of exceptions or its substitute, under the Act of 24th February, 1806. But no case has yet arisen which required of the revising courts any action or decision directly on this question. On two occasions, at least, we have the opinion of Mr. Justice DUNCAN, concurring in the fullest manner with the construction of the Statute of Westminster, already so frequently adverted to; the one in *Thomas* v. *Wright*, 9 S. & R. 91, the other in *Stafford* v. *Walker*, 12 Ibid. 196; and in *Reigart* v. *Ellmaker*, 14 Ibid. 124, this honorable court, consisting then, as now, of five judges, pronounced through the late Chief Justice TILGHMAN, an opinion in respect to the construction of the Act of Assembly of the 24th February, 1806, which, it is confidently submitted to your honors, is equivalent to a full recognition of the principle which the respondent has asserted in refusing to allow the pretended bill of exceptions, alleged by the petition to have been exhibited and required of him to be allowed. It is there decided that the true meaning of the Act of Assembly mentioned was, that when a judge delivered an opinion on matter of law, he should, if requested, reduce his opinion, with his reasons for it, to writing, and file it of record. This, it is said, in that instance, "was done as to several specified points on which an opinion was requested by the defendant's counsel. But this it seems was not deemed sufficient. The judge was requested to reduce his whole charge to the jury to writing, and file it. There is nothing in the Act of Assembly which authorizes such a request, and the judge was very right in declining to comply with it." And the reasons which are there assigned by the court demonstrate, in the most convincing manner, the impropriety of such a requisition, whether under the Act of Assembly which requires the opinion of the judge to be filed of record, or upon the statute of Westminster, where the matter complained of is to be exhibited through the medium of a bill of exceptions. "In a charge to the jury," says the Chief Justice, "the judge sums up the evidence and lays it before them, with such observations of his own as he thinks pertinent.

I believe no judge reduces his whole charge to writing before it is given, and, indeed, he could not do it *without ruinous delay*, and after it is given it would be impossible for a man of the most tenacious memory to recollect all that he had said on the facts of the cause. And even if it were possible, it would be improper to burthen the record with a quantity of unnecessary matter. It is the business of the counsel who requests an opinion to be filed to specify it. Several opinions on matter of law may be delivered in one charge. Some of these may be objected to, and some not; but at all events the judge should be informed what the opinion is which he is desired to reduce to writing, &c., and then it is his duty to file that opinion, with his reasons, and no more."

And the respondent would, in conclusion, on this branch of the present inquiry, bring to your honors' notice the strong expression of his opinion by Chief Justice GIBSON, in *Wolverton* v. *The Commonwealth*, 7 S. & R. 278. "No judge," he says, "ought, in justice to his own reputation as a lawyer, or to the rights of suitors, to allow any bill of exceptions which does not contain the very point decided, and nothing else. The statute of 13 Edw. 1, ch. 31, says: 'Where one impleaded before any of the justices, alleges an exception, praying they will sign it, and if they will not, if he that alleges the exception write the *same*, and requires that the justices will put to it their seals, they shall do so; and if one will not, another shall.' "Then surely the party taking the exception, is bound to write it exactly as he alleges it."

And the respondent further shows to your honors, that nearly a quarter of a century ago, the District Court for the City and County of Philadelphia adopted and promulgated the following rule of court, which has been in force ever since, to wit: "Either party excepting to the charge of the court to the jury, shall, before rendition of the verdict, state distinctly the several matters of law in such charge to which he excepts; and no general exception to the whole of the charge shall be allowed by the court, but the exceptions to the matter in law so distinctly stated, and those only shall be allowed in the bill of exceptions."

And the respondent shows to your honors, that immediately after the charge had been delivered to the jury in the case of Schloss Brothers *v.* Conrow, Mr. Earle, one of the defendant's counsel, came in front of the Bench, and said he desired to make

some exceptions to the charge, and thereupon handed to the respondent a half-sheet of cap paper, or it may be a whole one, on which were written what purported to be detached expressions of the charge. Respondent read the same, and remarked that he saw nothing in them which could be properly denominated *matters of law.*

Mr. Earle then took the paper away, and some time afterwards, a short time, respondent thinks, but cannot speak with certainty, he returned with another paper, on which was written, "*Defendant excepts*, Because, in the recapitulation of the evidence, the learned judge gave undue weight and prominence to those portions thereof which bore against defendant, and omitted or alluded slightly to those portions which bore in his favor."

2. "Because the charge as a whole was calculated to mislead the jury." On this paper respondent wrote, at Mr. Earle's request, which was in accordance with respondent's usual practice, "Defendant's exceptions," G. M. S. And the respondent fully admits that in this form, the same exceptions were made and may be so taken and regarded.

And the respondent saith furthermore, in regard to these alleged and pretended exceptions, that neither of them specifies or states any matter of law or any matter to be rightly contained in a bill of exceptions, reviewable in a court of error, but that the same should according to the course of the common law have been addressed to the sound discretion of the judges of the District Court, on an application for a new trial, and not otherwise.

And as to the *second*, it amounts to a general exception to the whole charge, which exception is at variance with the common law, and forbidden by the rule of court, hereinbefore contained and set forth.

And as to the other pretended exceptions, consisting of *twenty-four* sentences, alleged to have been uttered by the respondent in his charge to the jury, respondent says, that whether the same be taken singly or together, or in any possible permutation, they exhibit *no matters of law*, and ought not, therefore, to be allowed in the bill of exceptions. Whether or not such sentences were uttered by the respondent, he is unable to say, but a comparison of the same with the imputed charge, contained in exhibit A, shows a want of correspondence between the one and the other. Nevertheless, that nothing may stand in the way of your Honors

in examining the complaint of the plaintiff in error, respondent is willing and consents that each of the pretended exceptions may be taken as properly alleged. And so in regard to the charge, as set forth in exhibit A, respondent denies that the same in language and form was ever delivered by him; yet for the purpose of the present inquiry, and for no other purpose whatever, he is willing and consents that it may be taken as true in matter and substance.

And the respondent shows, and offers to the consideration of your Honors, that inasmuch as a court of error concerns itself with alleged errors in matter of law in the proceedings of inferior tribunals, and not with the general merits of the controversy between the parties as disclosed by the evidence, the rule of court which requires a specification, on the trial, of the matters of law contained in the charge, to which a party excepts, grants to such party every advantage which is called for by a regard to the interest of such party; and that the only difference between the requirement of such a rule and the allowance of a general exception to the charge has reference to the supposed convenience of the excepting party and nothing more. For the rule of court, adverted to, allows any and every matter of law alleged to have been erroneously stated to the jury to be excepted to; and by a rule of your honorable body, the plaintiff in error is required to make a written specification of the particular errors which he assigns and on which he intends to rely; so that the only difference is whether the party shall make his specification at one time or another.

And the respondent would further present to your Honors' consideration that of necessity from the constitution of a court of errors, it is imposed upon such court not unfrequently to reverse judgments from very small faults in the charge, such as arise from the use of language, in its nature imperfect, or the statement of a proposition or principle of law too broadly, and the like; whilst, at the same time, it is quite obvious that such minute error has very slight or no bearing at all on the merits of the cause, and in all probability has had no influence in producing the verdict.

A similar state of circumstances is adverted to and deplored by Chief Justice GIBSON, in his opinion delivered in *Wolverton* v. *The Commonwealth*, 7 S. & R. 277-8. On a motion for a *new*

*trial*, such a condition of things is usually disregarded. *Wakely* v. *Hart*, 6 Binn. 316, is an example of this kind. Being on a motion for a new trial, the error in the charge was deemed unimportant. On a writ of error the judgment would have been reversed. Yet had the subject of objection been mentioned to the judges before the rendition of the verdict, its force would have been perceived, and the mistake corrected; and yet the result of the trial not affected by it.

The specification required by the rule of court is calculated to produce, and has produced the like beneficial effect. The supposed error, on being pointed out, is at once rectified, the jury properly instructed, unequivocal language substituted for what might probably mislead, a judicious verdict rendered, and a writ of error saved.

And respondent further shows, that having been informed by petitioner's counsel that it is his purpose to question *the power* of the District Court to make the rule of practice already set forth, respondent would call to your Honors' attention that in establishing this court, as appears from the preamble of the Act of Assembly of March 30th 1811, a leading motive was to secure a speedy and effectual administration of the law in the trial of causes, and that by section 4th of the same act, the court is empowered and *enjoined* "to make such regulations of practice as may most facilitate the progress of justice."

And respondent further shows that the District Court has at different times made sundry rules, designed to effect an easy and speedy trial of causes, two of which, at least, have been adjudicated upon by the Supreme Court, and the power of the District Court to make such rules sustained, and the exercise thereof approved. The rules themselves here alluded to, and the approval of them, will be found reported in 5 W. & S. 176, *Odenheimer* v. *Stokes*, to which, for convenience, the respondent begs leave to refer.

The respondent, confiding on the justness and force of the suggestions already made, in conclusion, nevertheless, shows and offers to the consideration of your Honors, that the allowing of a general exception to the charge, or the requiring of a specification of the errors alleged, is a matter which concerns *the practice* of the inferior court, and, therefore, upon settled principles well

known to your Honors, cannot be the subject of revision at all by a Court of Error.

Upon this, as well as upon the other considerations submitted to your Honors, the respondent submits that the prayers of the petition of said Thornton Conrow be denied.

To this return the petitioner filed the following exceptions:—

I. The said George M. Stroud hath confessed the said petition to be true, but hath not affixed his seal to said bill, and so made return to said writ as thereby commanded.

II. The said George M. Stroud refused to seal said bill because the exceptions were directed to the whole charge, without showing that said exceptions could have been otherwise put.

III. The said George M. Stroud refused to seal said bill because of a rule of the District Court, which can only apply to such a charge as is separable in its character.

IV. The said George M. Stroud declines to seal the exception, "because the charge, as a whole, was calculated to mislead the jury," for the reason that the same is at variance with the common law and forbidden by a rule of the District Court, which, so far as the alleged conflict with the law is involved, is exclusively for the Court of Error, and, so far as the rule of court is involved, is wholly immaterial.

V. That the said George M. Stroud assumes that the sentences to the number of twenty-four, which were the subject of exception, exhibit no matter of law, without showing to the court the whole evidence in the case tried, that the Court of Error may judge if this be so.

VI. That the said George M. Stroud does not state, that at the time the said several exceptions were made, he informed the counsel that the same would not be thereafter sealed.

VII. The return is a statement of the facts, argumentatively, and with qualification, when the writ required plain, certain, and unqualified denial or confession.

*David W. Sellers*, for the exceptions.

The exceptions assume that the respondent has confessed that the petition is true, and raise the question, if his failure to seal is justified by the views set forth in the return.

They further assume, that if it be confessed that an exception was put in writing which the judge should seal, that this is a duty

which will be enforced by mandamus. It is only in case of a return, which denies the facts in such a manner that an action will lie thereon, that the proceedings end with the return.

A court, having appellate jurisdiction, will compel by mandamus the sealing of a bill, when a bill *should be* sealed: *Ex parte Crane*, 5 Peters 190.

The writ founded on the statute provides a specific remedy for a suitor if a judge declines to seal an exception, and it is for this reason that the writ of mandamus has not applied where the statute is in force: *Man* v. *Drexel*, 6 W. & S. 397; *Bridgeman* v. *Holt*, Shower's Parl. Cases 120.

Because the statute of Westminster is not obligatory on the courts of the United States, a mandamus was adjudged to be the proper remedy to oblige the sealing of a bill in the court below: *Ex parte Crane*, 5 Peters 190. This writ on the statute is entirely mandatory, and is so regarded: *Lessee* v. *Bank of Indiana*, 1 Wallace 599.

What, then, is the mandate of the statute and of the writ? Simply, that the judge appear either to *confess* or *deny*, and *if* he *confess*, to *affix his seal.*

The words of the statute are: "If he that alleges the exception *write the same*, the justice *shall* seal."

What has the respondent done? He has confessed the facts to be so, but does not answer that he has affixed his seal. In other words, he disobeys the writ.

Has he confessed? Speaking of the general charge, he says: "Respondent denies that the same, in language and form, was ever delivered by him; yet, for the purpose of the present inquiry, and for no other purpose whatever, he is willing, and consents that it may be taken as true in matter and substance."

When it is remembered that a judge of the District Court is not bound to reduce his charge to writing, all that he can reasonably ask is, that the statement of his charge shall be true in matter and in substance.

Why not affix the seal? The duty to do so, if confession of the facts be made, is peremptory, and no excuse for non-compliance is admissible.

On this point, it is submitted that the learning on mandamus is entirely applicable, and no case can be found in which there is a peremptory command to do a certain thing, in which anything but

obedience will answer: *The Queen* v. *Mayor*, 1 Gale & Davison 728 (1841); *Commonwealth* v. *Taylor*, 12 Casey 263.

But it is submitted, that if a judge mislead a jury by the whole charge, it is error in Pennsylvania; and how can this court know if the charge excepted to did this, without a sealed bill containing the evidence?

It has been held by a continuous train of decisions in Pennsylvania, that it is error in a judge, where there has been no specific instruction asked for, so to charge a jury as to confine their attention to one view of a case when there is more than one which they should consider: *Garrett* v. *Gonter*, 6 Wright 146; *Siegel* v. *Louderbaugh*, 5 Barr 490. For a misdirection judgment will be reversed, though no instruction be requested: *Phœnix Insurance Co.* v. *Pratt*, 2 Binn. 308; *Reef* v. *Rapp*, 3 W. & S. 21; *Bank* v. *Foster*, 6 Watts 310.

If, *as a whole*, the charge was calculated to mislead the jury, it is error: *Reeves* v. *Railroad*, 6 Casey 460; *Bovard* v. *Christy*, 2 Harris 267; *Nieman* v. *Ward*, W. & S. 68; *Armstrong* v. *Hupey*, 12 S. & R. 315.

A review of the authorities cited by respondent will confirm the line of argument herein suggested.

In *Bridgeman* v. *Holt*, Showers's Parl. Cas. 111, it was said: "The writ recites a surmise of an exception taken and overruled, and it follows *vobis præcipimus, quod si ita est tunc sigilla vestra apponatis. Si ita* is conditional: if the bill be true and duly rendered, then this writ; and if it be returned, *quod non ita est*, then an action for a false return, and thereupon the surmise will be tried, and if found to be so—damages; and upon such a recovery a peremptory writ commanding the same."

It is submitted that this is an authority full on every point for the petitioner in this case.

That a *mandamus* will not lie in *the first instance* to procure a sealed bill is clear; but that it will, if there be confession of the facts or recovery notwithstanding a denial, is just as clear,—and this case was cited in 6 W. & S. to prove that a *mandamus* did not lie, but that the relief was on the statute of Westminster as indicated in this case in Showers.

All of the other cases cited, which are authoritative on this Court, are opinions rendered on *sealed* bills of exceptions, in

which the whole record was, of course, before the Court, and the weight of the exception could be considered after full argument.

The statutes in this state, requiring judges to file their opinions on any point of law, do not apply to the District Court.

The rule of the District Court relied upon, it is submitted, is beyond its power, if it be applied to a charge which cannot be separated into parts without doing injustice to the judge.

*George W. Biddle* and *Meredith*, for Judge Stroud, argued that the exceptions were not to points of law within the meaning of the statute, or were not in the form required by the rules and practice of the District Court.

PER CURIAM.—The writ awarded in the above case, after reciting the material facts alleged under oath by the petitioner, commanded Judge Stroud, *if so it be*, that he should on a certain day affix his seal to the exceptions alleged by the petitioner, according to the form of the statute. This was the whole exigency of the writ. It was framed upon the statute of Westm. 2, which was the statute referred to, and neither the statute nor the writ required more of the judge than that he confess and seal the exceptions, or deny them. If he confessed and sealed them they became part of the record, and the party would have his writ of error to remove them with the record into this court for review; if he denied them, the petitioner would have his action at law for a false return.

The judge was not called on to show cause why he should not seal the exceptions, and we had nothing to do in this proceeding with the quality of the exceptions; and hence the voluminous argument introduced into the return to prove that the petitioner was not entitled to the exceptions was utterly irrelevant. When the record comes up, upon a writ of error, will be the time for us to consider whether the exceptions were duly taken under the rules of the District Court, and whether they are sufficient in law, and we are not to be precipitated into a premature consideration of these points. The statute which gives the writ imposes no such duty upon us at present.

On the ground that the return was argumentative and uncertain, we allowed exceptions to be filed to it, and these brought out the fact that, notwithstanding the protestations and qualifica-

tions of the return, it did, in reality, amount to a confession of the exceptions, and the judge accompanied it with an explicit and repeated oral declaration in the presence of this court, of his willingness to seal the bill if we should be of opinion that he ought to do so.

Seeing that it is now admitted on all hands that the return confesses the bills as alleged, we, of course, think the judge ought to sign them. And in saying so we found ourselves entirely on the confession, and not upon the nature or legal effect of the bills. When we issued the writ we said this would be his duty in the event of a confession, and that we stated the practice correctly is shown by all the cases cited by counsel.

The whole law of the writ was condensed into a few words in the case of *Bridgeman* v. *Holt* (Showers's Parl. Cases 111), where, after giving the substance of the writ in Latin, it is said: "*Si ita* is conditional; if the bill be true and duly rendered, then this writ; and if it be returned, *quod non ita est*, then the action of a false return, and thereupon the surmise will be tried, and if found to be so, damages; and upon such a recovery, a peremptory writ commanding the same."

The writ we issued was preliminary and alternative. The return is *quod ita est*. Judge Stroud's offer to seal the bills may, therefore, be accepted as the legitimate fruit of the writ, and as obviating the necessity for any further process.

Let the bills be sealed.

AGNEW, J., heard this cause, but was absent at Nisi Prius when it was determined, and took no part in its final decision.